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05 UNITED STATES DISTRICT COURT
06 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

07 MUHAMMED TILLISY,)
08) CASE NO. C11-1858-RSM
09 Petitioner,)
10 v.)
11) REPORT AND RECOMMENDATION
12 MARION FEATHER,)
Respondent.)
_____)

13 *Pro se* petitioner Muhammed Tillisy filed an application to proceed *in forma pauperis*
14 (“IFP”) (Dkt. 1), a proposed 28 U.S.C. § 2241 habeas petition (Dkt. 1-1, hereinafter “Habeas
15 Petition”), and a motion for a preliminary injunction to prevent his transfer from the Federal
16 Detention Center - Seatac (“FDC”) or to return him to the FDC if he has already been
17 transferred (Dkt. 4). In his underlying, proposed § 2241 petition, Mr. Tillisy argues that he
18 was improperly removed from a community-based center based on a disciplinary hearing that
19 found him guilty of a violation. (Habeas Petition, at 1, 7–13.) The Court recommends
20 **DISMISSING** Mr. Tillisy’s § 2241 habeas petition without prejudice for failure to exhaust
21 administrative remedies and **DENYING** as moot his motion for a preliminary injunction (Dkt.
22 4) and IFP application (Dkt. 1).

01 **I. BACKGROUND**

02 In 2010, Mr. Tillisy pleaded guilty to conspiracy to commit access device fraud and was
03 sentenced to thirty-three months of imprisonment, which was to run concurrently with a
04 two-year sentence imposed in a separate criminal matter after the revocation of his supervised
05 release. See Dkt. 134, *United States v. Tillisy*, CR09-269-MJP (W.D. Wash., judgment dated
06 Apr. 14, 2010); Dkt. 70, *United States v. Tillisy*, CR09-156-MJP (W.D. Wash., judgment dated
07 Apr. 14, 2010). Mr. Tillisy contests his removal from his placement in a community
08 corrections center and return to custody at the FDC. (Habeas Petition, at 1.) According to
09 Mr. Tillisy, he was accused of attempting to apply for benefits and lying to the Division of
10 Vocational Rehabilitation about being on work release. (*Id.*) Mr. Tillisy alleges that he was
11 found not guilty of those accusations yet his community placement was revoked because the
12 Community Discipline Committee determined at a hearing that he should have immediately
13 informed the staff about the loss of his wallet and phone, presumably because someone fitting
14 his description might have committed the offense. (*Id.* at 2–5.) For relief, Mr. Tillisy asks
15 that he be returned to his community placement. (*Id.* at 13–14.) In a motion for a preliminary
16 injunction, he seeks to enjoin the Bureau of Prisons (“BOP”) from transferring him out of the
17 FDC until the Court resolves this matter. (Dkt. 4.)

18 This Court appears to be the proper venue for this action: Mr. Tillisy filed this petition
19 while confined at the FDC, which is located in the Western District of Washington, at the time
20 of this Report and Recommendation he remained confined at the FDC, and the events giving

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01 rise to the claims occurred within this district. *See* 28 U.S.C. § 2241(a).¹

02 **II. DISCUSSION**

03 Although Mr. Tillisy contends that he should not have been removed from community
04 custody, he states no basis in federal law for this assertion other than citing his disagreement
05 with the result of a disciplinary hearing and insinuating cronyism. He alleges that any attempt
06 to exhaust administrative remedies would be futile because he is scheduled to be released in
07 February 2012 and any administrative relief would arrive too late. (Habeas Petition, at 8–9.)
08 The Court recommends dismissing Mr. Tillisy’s § 2241 petition without prejudice for failure to
09 exhaust administrative remedies. Mr. Tillisy’s pleadings show that he has declined to avail
10 himself of existing, administrative remedies and his allegations fail to demonstrate that doing so
11 would be futile. The Court thus also recommends denying as moot his motion for a
12 preliminary injunction and IFP application.

13 Mr. Tillisy properly brought this matter as a § 2241 habeas petition that challenges the
14 manner and conditions of the execution of his sentence. *See Hernandez v. Campbell*, 204 F.3d
15 861, 864 (9th Cir. 2000). Nevertheless, before petitioning for habeas relief, federal prisoners
16 are required to exhaust their administrative remedies through the BOP. *Fraley v. U.S. Bureau*

17 ¹ Absent unusual circumstances, a habeas petition filed pursuant to § 2241 must be heard in the judicial
18 district where petitioner is under custody. *Hernandez v. Campbell*, 204 F.3d 861, 865 (9th Cir. 1999) (per
19 curiam). “The plain language of the habeas statute thus confirms the general rule that for core habeas petitions
20 challenging present physical confinement, jurisdiction lies in only one district: the district of confinement.”
21 *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). Although it is possible for a federal district to retain jurisdiction
22 when the government moves a habeas petitioner after he properly files a petition against his immediate custodian,
the pivotal question remains whether a district court can effectively grant habeas relief despite the absence of the
petitioner. *Id.* at 440–42. Furthermore, an analysis of the proper forum for a habeas petition is guided by
traditional principles of venue. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 450 (1973).
Although this Court could choose to transfer this matter to a new district should petitioner be moved during the
pendency of consideration, little would be gained from such a transfer if this Report and Recommendation is
adopted. This Court had jurisdiction over this matter at the time of filing and has the authority to dismiss a § 2241
petition without prejudice. Moreover, petitioner is not impeded from refiling his case in a new district.

01 of Prisons, 1 F.3d 924, 925 (9th Cir. 1993); *Tucker v. Carlson*, 925 F.2d 330, 332 (9th Cir.
02 1991); *Martinez v. Roberts*, 804 F.2d 570, 571 (9th Cir. 1986). A federal prisoner need not
03 exhaust administrative remedies if pursuing those remedies would be futile. *Fraleigh*, 1 F.3d at
04 925.

05 The Court finds that Mr. Tillisy has failed to exhaust his administrative remedies
06 through the BOP. Mr. Tillisy states that he intentionally chose not to exhaust administrative
07 remedies because it would take at least 60 to 90 days to do so and he desires immediate relief
08 from this Court. (Habeas Petition, at 8–9.) Although Mr. Tillisy alleges that it would be
09 futile to seek administrative relief, this contention is entirely unsupported. Mr. Tillisy’s
10 motion for a preliminary injunction should be dismissed as moot because he cannot show a
11 likelihood of success on the merits and his conclusory allegations in no way suggest that he has
12 been impeded from administratively exhausting his grievance. These conclusions also render
13 Mr. Tillisy’s IFP application moot regardless of any pending filing deficiencies.

14 III. CONCLUSION

15 The Court recommends **DISMISSING** Mr. Tillisy’s § 2241 habeas petition without
16 prejudice for failure to exhaust administrative remedies and **DENYING** as moot his motion for
17 a preliminary injunction (Dkt. 4) and IFP application (Dkt. 1). A proposed order accompanies
18 this Report and Recommendation.

19 DATED this 28th day of November, 2011.

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21 Mary Alice Theiler
22 United States Magistrate Judge